APPENDIX P

Excerpts of Transcript - Arguments on Presentence Report dated 5/16/97

THE COURT: All right.

MR. MISTRETT: Judge, in any event, the Government in its response, I believe, sums this matter up quite succinctly when it indicates at page four thereof that the defendant's conduct, signing audit confirmat ions, given the plethora of concerted activity by others in the Wymer network constitutes that only of a minimal act. The Government has pointed to it's organizational chart set forth in this (?) bound sentencing submission, and I respectfully submit to the court, we also have submitted a chart in our papers that we both believe in light of the fact that they detail the relative culpability of the people involved, the overall activity that went on here --

THE COURT: Why are we dealing with overall activity

MR. MISTRETT: Judge, that I believe, is the initial focus that we should have here.

THE COURT: Really? Are you familiar with the Second Circuit Law that says that -- that when the base offense level was calculated on the limited role of the person that you don't take in the entire conspiracy? We're only talking about one aspect of this gigantic scheme. We're not talking about the overall Wymer conspiracy here for sentencing purposes of your client.

MR. MISTRETT: Judge, I feel in the unique circumstances that we have --

THE COURT: Which is?

MR. MISTRETT: Pardon me?

THE COURT: Which is?

MR. MISTRETT: Which is we have a scheme where one man has been the moving force, the head of this entire conspiracy --

THE COURT: We're not talking about the entire conspiracy. 1 mean, the law is contrary to what you're saying. I mean, Second Circuit has been quite clear, and I'm going to quote

the Second Circuit to you, so I make sure you understand where I'm coming from. In other words, the base defense level was calculated on the basis of a limited role and not the role of the entire conspiracy, a minor role reduction, pursuant to 3Bl.1 therefore is inappropriate --

MR. MISTRETT: Well, Judge, I would point out in response thereto --

THE COURT: Mr. Mistrett, I'm sure you're familiar with the case of United States verses Lewis. It's a 1996 Second Circuit discussion. So, your oral argument on overall conspiracy is not very persuasive.

MR. MISTRETT: Judge, let me just say this, if I can, in response to the court's position --

THE COURT: Well, I'm just reading the law on the Second Circuit.

MR. MISTRETT: I'm aware of that, Judge.

THE COURT: okay. Which I am bound to follow.

MR. MISTRETT: I'm also aware of that, Judge. With respect to the city of Loma Linda, Judge, in the memorandum dated April 18th, 1997, it's Ms. Rahill-Beuler's report at page three thereof, the probation office describes the City of Loma Linda scheme.

THE COURT: Page three of her report?

MR. MISTRETT: Yes, Judge. It's the third page if you count the cover page as page number one.

THE COURT: Okay. Page three. What paragraph?

MR. MISTRETT: It's entitled, "The city of Loma Linda Scheme" at the top ,

THE COURT: Okay.

MR. MISTRETT' Now, Judge, the first person treated therein is Steven Wymer, who I don't think anybody disputes here. is the king pin and most culpable individual involved in the instant offense, and I focus on the point that this is probation's view of the Loma Linda scheme, because on the previous page --

THE COURT: How much money are you saying was involved in the Loma Linda scheme; one hundred million dollars?

MR. MISTRETT: I'm not --

THE COURT: What are you saying it is?

MR, MISTRETT: Well, according to Ms. Rahill-Beuler's report, and I think this is confirmed in the papers, the total loss to Loma Linda was one million eight hundred thousand, and the probation department concluded --

THE COURT: One million eight hundred thousand -- or is it seven hundred and seventy-three thousand?

MR. MISTRETT: No, Judge, the entire -- I'm sorry, maybe I wasn't clear, On the previous page --

THE COURT: Well, let me ask you; what was the amount of money that you understand to be involved in the Linda Loma scheme?

MR. MISTRETT: The Loma Linda scheme.

THE COURT: Loma Linda, whatever.

MR. MISTRETT: There are two amounts, Judge. That's what I'm trying to point out to you.

THE COURT: Okay.

MR. MISTRETT: The amount, the total amount lost according to the April 18th memorandum is 1.8 million dollars. That's on page two of that memorandum under the title, "Overall Scheme". The loss attributable to the defendant as an employee of Refco is the figure which Your Honor mentioned, $773,789.

THE COURT: So, the relevant conduct is $773,000.

MR. MISTRETT: Yes, Judge.

THE COURT: That's just been calculated here?

MR. MISTRETT: Yes, Judge. I think that's --

THE COURT: So, why do you keep talking about the overall scheme?

MR. MISTRETT: Well, Judge, I thought it was a very relevant thing to discuss.

THE COURT: I just read to you what the second circuit said.

MR. MISTRETT: I understand that, Judge.

THE COURT: Well, how do you get around that?

MR. MISTRETT: I'm trying to show you, at least, if you're going to focus on Loma Linda, Judge, which it's my understanding that's what you're doing, I would like to respond to

your focus by continuing here at page three here if I might?

THE COURT: Okay.

MR. MISTRETT: As I started to say, Judge, under the specific heading of the "city of Loma Linda Scheme", Steven Wymer in this report is described as the king pin and most culpable individual involved in the instant offense. James Pierce -- Mr. Pierce's role is pointed out in this memorandum-- is well described on page two of Exhibit 1. His role extended to the City of Loma Linda. He had the role of making the various cities understand and believe Wymer's quote "magic" .

Now, in this report, the postal inspector who apparently was the main, if not one of the main investigators, and his estimate is contained in this memorandum. Mr. Pierce was quote, "considerably more culpable than the defendant" .

THE COURT: What scheme are you talking about?

MR. MISTRETT: This is right from the City of Loma Linda scheme.

THE COURT: That says various cities.

MR. MISTRETT: I'm sorry?

THE COURT: It says cities.

MR. MISTRETT: That's what we're talking about, Judge.

THE COURT: Well, that's only one city.

MR. MISTRETT: That's correct.

THE COURT: This says cities. To make the various cities.

MR. MISTRETT: I understand that, Judge, but --

THE COURT: So, we're talking about something even greater than just Loma Linda alone.

MR. MISTRETT: I don't know, Judge. I'm looking at a report that's entitled, "The City of Loma Linda Scheme". What I quoted to you is taken right from that heading, Judge.

THE COURT: But it says cities. While we got the probation officer right here, are we talking about just that one city?

PROBATION OFFICER: Your Honor, what Mr. Pierce did, he did in many cities including Loma Linda. He was able to make it work in various cities including Loma Linda. I suppose you can take out various cities and just say it's -- if you want to

take the Loma Linda, it would have the same purpose.

MR. MISTRETT : Again, Judge, I'm just pointing out that according to this memorandum, Mr. Pierce was considerably more culpable than the defendant with respect to Angela Chilles. I might add also, Judge, that James Pierce was employed by Mr. Wymer at the California office, a direct employee of Wymer. Angela Chilles was another direct employee of Wymer.

Again, according to this report under the heading of the "City of Loma Linda Scheme" , I again quote, Judge, "while Wymer is described as the master mind of the offense, Chilles made the scheme work. Her skills made it make sense on paper. She also had direct contact with the cities including the City of Loma Linda" .

The postal inspector, I'm jumping down quite a bit, Your Honor, but it is in that same paragraph, number three. "The postal inspector stated that she was clearly far more culpable even for just Loma Linda than the defendant".

Paragraph number four describes Diana King. She is described as Mr. Wymer's forger. Again, I quote, "by virtue of her willingness to forge anything and everything that Wymer asked her to forge, she has a higher level of culpability thanGoodman "

THE COURT: Maybe if she were convicted, maybe she could get a three level upward for her role in the offense.

MR. MISTRETT: Speculation, judge. I don't know that.

THE COURT: Okay.

MR. MISTRETT: Thomas Burn is the fifth person mentioned under the Loma Linda scheme. He was an independent auditor that Mr. Wymer himself recommended that the client should use, and they don't really assess -- or I should say his role is really not assessed in terms of his relative culpability to Ms. Goodman as far as the Loma Linda scheme.

Judge, I would have to say that obviously the guidelines in the application notes use examples of drug crimes, off-loader boats, things of that nature. Obviously, none of us read that to mean that a minor or minimal roll is limited to situations where people are in drug -- or excuse me, engaged in drug transactions. I think the problem that we have here, and it's a problem for me,

Judge, this is not an easy area. This isn't cut and dry. This isn't an easy area to deal with, but it's very difficult to graft a massive fraud case such as exists here.

THE COURT: What drug case are you talking about?

MR. MISTRETT: Massive fraud.

THE COURT: What fraud are you talking about?

MR. MISTRETT: The overall --

THE COURT: I'm not talking about the overall. I'm talking about the only issue that's relevant here. Not Wymer's overall one hundred million dollars. We're not talking about that for the purpose of the sentencing. You keep wanting to compare the overall conspiracy with your client's role. That's not what we're comparing it to, because that's not a proper analysis. At least, I don't believe it is.

MR. MISTRETT: Well, Judge, we'll obviously have tobe pursuing that. But all I'm saying --

THE COURT: Well, the law is clear on it, I mean, the Second Circuit has stated in the Lewis case and in the Gomez case in 1993 -- "

MR. MISTRETT: Judge, this is an unusual circumstance. It's virtually impossible to fit application notes dealing with drug crimes into the facts of this case, but I'm saying to you, Judge, even under the limited view of the Loma Linda scheme as contained now in the memorandum dated April 18th, in that very memorandum, certain people are described as far more culpable than Kim Goodman.

THE COURT: But you're saying -- you're equating more culpable, therefore, she must have a smaller role.

MR. MISTRETT: By virtue of what she did, Judge --

THE COURT: First of all, you start with the offense level we're talking about in this situation. Her involvement is $773,000. Okay. That's the amount we're talking about.

MR. MISTRETT: That's correct.

THE COURT: That's where the offense level was calculated at.

MR. MISTRETT: That's correct.

THE COURT: okay. So, now the $773,000 when she -- well, what's the amount of money that she received from Wymer and her involvement in the $773,000? She's got a Jaguar for $62,000. Mercedes Benz for $66,000. $178,000 in cash. I add that up to almost forty percent of all the income went to her. hat could hardly put her in a minimal, probably not even a minor role.

MR. MISTRETT: Judge --

THE COURT: probably puts her right at the -- maybe even at the offense level without any calculation or increase in the amount .

MR. MISTRETT: Judge, as we explained in our papers --

THE COURT: Well, you explained in your papers that, Judge, we worked this thing all out with the Government, and I don't understand why you're making a big issue out of this. We've already agreed to this, the Government and the defense.

MR. MISTRETT: That' s not --

THE COURT: That's the impression I got from reading these papers.

MR. MISTRETT: Pardon me?

THE COURT: That'S the impression 1 get from reading these papers. What are you looking into this for, Judge? We've already figured this all out for you.

MR. MISTRETT: Judge, if that was my position, I don't think I would have set forth twenty pages of affidavit and fifteen pages of memorandum of law.

THE COURT: Well, would you agree with me that her nvolvement, at least, as far as dollars and cents is about forty percent?

MR, MISTRETT: Well, no, Judge, I can't agree to that because as I set forth in our affidavit, yes, she did receive a Jaguar, Judge. There's no question.

THE COURT: And a Mercedes and $178,000 in cash.

MR. MISTRETT: Well, but, Judge, the affidavit points out that the Jaguar she thought was gift from Wymer for money she had made for him trading in valid commissions thereof -- commissions, excuse me. And then that car was destroyed in an accident, and he gave her the Mercedes. As, your Honor can see,

we put the price of the Mercedes, and then we put the shipping cost and the fact that she paid the tax to the Department of Motor Vehicles. She went -- with respect to the Jaguar, she went to an attorney to see if what -- to accept a gift under those circumstances was proper, because she was working in an SEC controlled business, and she went and got a lawyer's advice, Judge. Now, what Wymer had in his mind, Judge, as to why he was giving those cars to the defendant --

THE COURT: What lawyer was that?

MR. MISTRETT: I'm sorry?

THE COURT: What lawyer is that? Is that the SEC lawyer?

MR. MISTRETT: No. No.

THE COURT: The question is the amount of money she got from Wymer for her assistance was $773,000, or was this -- well, maybe now it's the money I just indicated.

MR. MISTRETT: Well, Judge, she received those things, but I would like to respond. I've just responded to the cars. I'm trying to find in my, affidavit -- the lawyer's name is Sergeant, Judge. I just can't find you a paragraph referenced in my affidavit, but in any event, she did go and seek advice from this attorney to make sure that -- I'm sorry, here it is, the affidavit paragraph 43.

THE COURT: Let me ask you; do you concede to the fact that she received a $62,00 Jaguar, $66,00 Mercedes, and $178,000 for a grand total of $306,000 for her involvement with Wymer?

MR. MISTRETT: Well, no. No, I don't concede that, Judge.

THE COURT: Well, what do you concede?

MR. MISTRETT: I concede that she received a Jaguar, 22 which she thought was for the good trades, a gift from a valued client that she helped make a lot of money for. I concede that when that car was cracked up --

THE COURT: What was she doing at that time?